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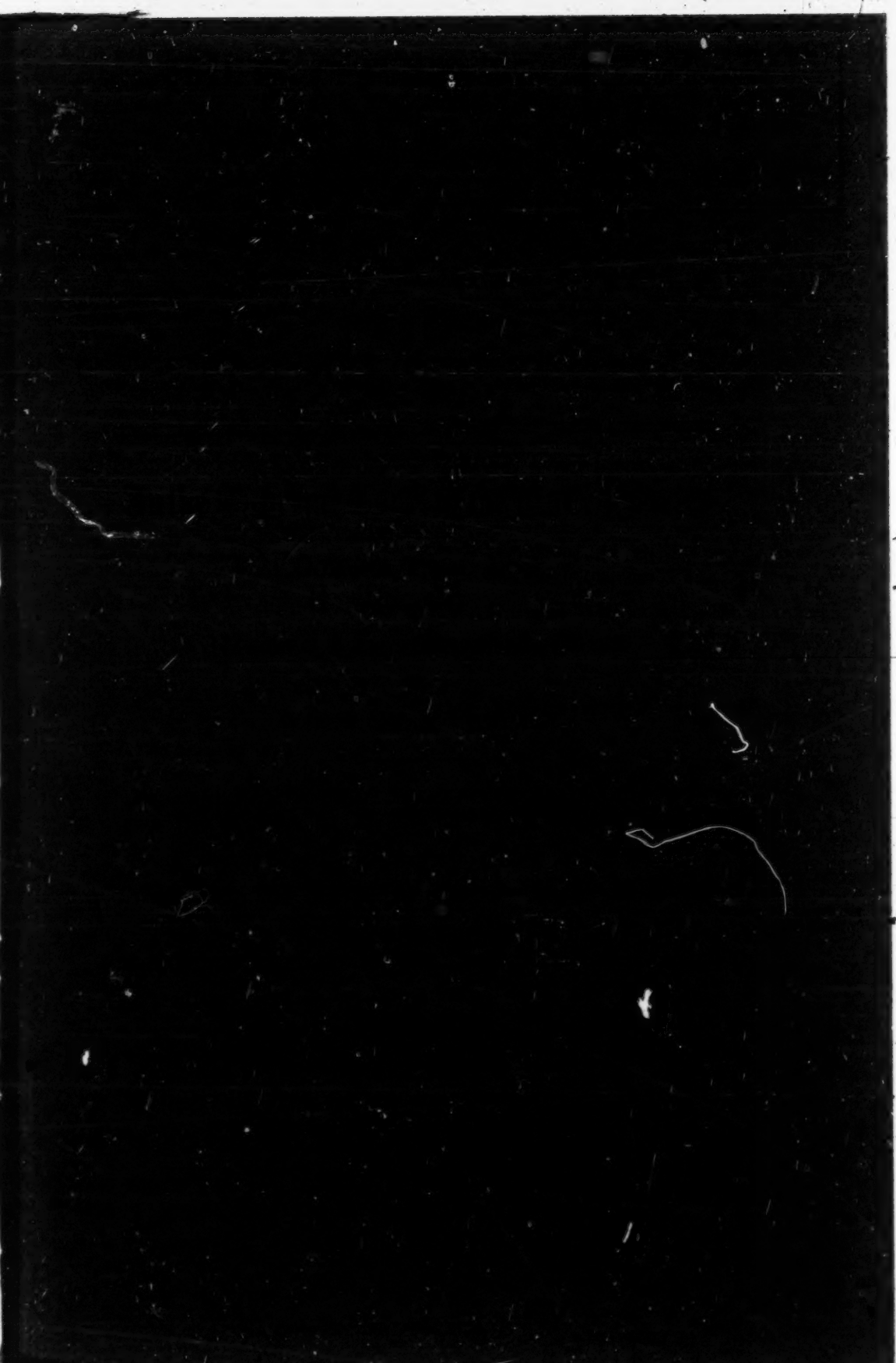

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 529

NATIONAL LABOR RELATIONS BOARD

v.

WHITE SWAN COMPANY

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The findings of fact, conclusions of law, and order of the National Labor Relations Board are not yet reported in permanent form; they are presently available in advance sheet form (19 N. L. R. B., No. 112) and are reproduced in Appendix A, *infra*, pp. 27–28.

JURISDICTION

The certificate of the Circuit Court of Appeals was filed in this Court on October 28, 1940. The

jurisdiction of this Court rests upon Section 239 of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS CERTIFIED

"1. Should the National Labor Relations Act be interpreted as having application to a business of purely local character, such as a laundry, merely because such business is located in a city on a state line and derives a substantial portion of its income from business which involves collections or deliveries of articles in a state other than that in which the business is located?"

"2. Where a local business, such as a laundry, is located in a city on a state line, and is not engaged in interstate commerce, except insofar as it may collect articles to be serviced and may make deliveries to customers living across the state line, is such business, by reason of such collections and deliveries, deemed engaged in 'commerce' within the meaning of Subsection 6 of Section 2 of the Act of July 5, 1935, ch. 372, 29 U. S. C. A. 152 (6), so that an unfair labor practice on its part would be an unfair labor practice 'affecting commerce' within the meaning of Subsection 7 of said section (29 U. S. C. A. 152 (7)) and Subsection (a) of Section 10, 29 U. S. C. A. 160 (a)?"

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act are set forth in Appendix B, *infra*, p. 29.

STATEMENT

The National Labor Relations Board petitioned the court below for enforcement of an order against the White Swan Company, a West Virginia corporation, to cease and desist from certain unfair labor practices and to offer reinstatement with back pay to certain employees found to have been discharged for union activity. The court below states in its certificate (p. 1) that the findings of the Board with respect to the unfair labor practices and discriminatory discharges are sustained by substantial evidence, and expresses doubt only as to the jurisdiction of the Board. The facts set forth in the certificate (pp. 1–2) may be summarized as follows:

The Company operates a combined laundry and dry cleaning establishment in the city of Wheeling, West Virginia. It collects and delivers garments for its customers, and in this connection maintains a fleet of delivery trucks. Three of the delivery routes from its plant are in Ohio, the remaining eleven being in West Virginia. A radius of fifteen miles is the practical limit for a laundry or dry cleaning business in this territory.

Approximately 18 percent of the Company's 1938 gross income was derived from the servicing of garments for customers residing in Ohio: about 12.93 percent with respect to garments transported to and from the Company's plant in its own trucks, and about 5 percent with respect to

garments which persons not in its employ collected in Ohio, brought to its plant for servicing and then delivered in Ohio. Thus, the Company's 1938 gross income was $128,752.96, of which $23,088.43 [1] was attributable to its Ohio business.

In the operation of its plant, the Company uses various supplies, consisting of soap, bluing, bleach, solvent, coal, water, paper, tape, and padding. During 1938, it expended $38,333.15 for such supplies, of which $10,810.90 was allocable to supplies obtained from without West Virginia.

The court below states that the Company's purchase of supplies from without the state is not sufficient to confer jurisdiction upon the Board (p. 1). But it recognizes that the collection and delivery of garments across state lines does constitute interstate commerce, and it seeks the instruction of this Court only upon whether Congress *intended* the Board to have jurisdiction with respect to such interstate commerce, which it describes as "local" in character.

Upon certification, the Solicitor General filed a motion in the court below, asking that the certificate be amended. He pointed out that the Board, in its findings (pp. 27–28, *infra*), had rested its jurisdiction upon the out-of-state purchases as well as upon the Company's activities with respect to its Ohio customers, and contended that it was inap-

[1] The certificate inadvertently states the amount to be $28,088.43 (p. 2).

propriate for the court to segregate the constituent elements supporting the Board's jurisdiction. He therefore requested the court below to amend its certificate, so as to place before this Court the entire basis upon which the Board rested its jurisdiction (see note 13, p. 24, *infra*). The court denied the motion, but at the same time reaffirmed its previous conclusion that the Company's income from collections and deliveries beyond the state is "substantial" and stated that it merely wished to be instructed as to whether jurisdiction can be supported by such activities (Certificate, pp. 5–6).[2]

SUMMARY OF ARGUMENT

I

The Company is directly and substantially engaged in interstate commerce by reason of its collection, servicing, and delivery of garments which pass to and from its plant in such commerce. The Circuit Court of Appeals did not doubt, and it is clear, that the Act may be constitutionally applied to the Company. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453; *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197; *National Labor Relations Board* v. *Fain-*

[2] The order of the court denying amendment of the certificate has been printed and is annexed to the certificate (pp. 5–6).

blatt, 306 U. S. 601; *National Labor Relations Board* v. *Bradford Dyeing Ass'n,* 310 U. S. 318. The only question raised is whether the Act should be limited in application to less than its apparent and permissible scope for the supposed reason that Congress did not intend it to apply to a business described by the court as "purely local" in nature. *United States* v. *Sorrells,* 287 U. S. 435, 446. But the Act on its face evidences a legislative purpose to exercise the full power of Congress under the commerce clause. *Fainblatt* case, *supra.* The legislative history confirms this intent. And there is no basis for an inference that Congress intended to exclude from the Act substantial interstate commerce merely because it is carried on within a limited area.

The fear expressed by the court below, that if the Board's jurisdiction is sustained in this case, the Act may be applied to many "businesses of purely local character," is groundless. The Board does not apply the Act to entire industries but to particular employers. Each case must be determined as it arises. *Jones & Laughlin* case, *supra; Santa Cruz* case, *supra.*

Nor is the Company's business "purely local." The Company is directly engaged in interstate commerce. The fact that it constitutes a unit of the power laundry and cleaning and dyeing business does not lend it "local character" for purposes of the National Labor Relations Act. That

industry, presumably, occasions large amounts of commerce among the several States, which commerce is subject to disruption by industrial strife. There is no indication that Congress intended to exclude that commerce from the protection afforded interstate commerce generally.

II

Because of the unusual posture of this case, if the questions certified are not answered in the affirmative, the certificate should be dismissed without answer to the questions. The questions certified "are not raised by the case made * * *." *Seim* v. *Hurd,* 232 U. S. 420, 427. The Board based its jurisdiction upon the aggregate effect of unfair labor practices upon (a) the commerce involved in the Company's receipt of materials and supplies and (b) the commerce involved in the Company's collection, servicing, and delivery of garments. The questions certified confine this Court's consideration to the effect upon the second type of commerce alone.

The Circuit Courts of Appeals have uniformly held that the threat of obstruction to incoming commerce supports the Board's jurisdiction. And the volume of such commerce in this case far exceeds "that to which courts would apply the maxim *de minimis.*" *Fainblatt* case, *supra.* Moreover the application of the Act should depend upon whether the aggregate effect of an industrial dis-

pute upon all the interstate commerce in which the Company is engaged would be substantial. That is the basis upon which the Board considered and disposed of the question. The Circuit Court of Appeals should not be permitted to require consideration of the issue by this Court upon a different basis from that upon which the Act was applied by the administrative agency.

An affirmative answer to the questions certified will be appropriate, procedurally, since such an answer would dispose of the entire controversy. But a negative answer would not be appropriate since it would leave open the question presented concerning the application of the Act.

ARGUMENT

I

BY REASON OF ITS COLLECTION, SERVICING AND DELIVERY OF GARMENTS WHICH PASS TO AND FROM ITS PLANT IN INTERSTATE COMMERCE, THE COMPANY IS SUBSTANTIALLY ENGAGED IN SUCH COMMERCE AND IS, THEREFORE, SUBJECT TO THE ACT

About 18 per cent of the Company's gross revenue, or some $24,000 per year, is derived from servicing operations performed upon garments which are brought to its plant in interstate commerce and which, after being serviced, are redelivered in such commerce to the owners. More than two-thirds of the continuous interstate transportation which this business involves is accom-

plished in the Company's own trucks; the remainder is carried on by independent route operators who collect the articles in Ohio, bring them to the plant in West Virginia, and later redeliver them in Ohio. This substantial flow of interstate commerce to and from the Company's plant is occasioned only by the plant's existence and will continue only while its operations do.

The court below correctly recognized that "the collection and delivery of garments across state lines, as above described, constitutes interstate commerce" (p. 2). And it noted further that such interstate business in this case is "substantial" in amount (pp. 3, 5). It suggests not the slightest doubt that Congress has power to confer jurisdiction upon the Board in these circumstances. Nor could any such doubt be entertained, since the stoppage of the Company's operations through industrial strife would result in the interruption of a "substantial" amount of interstate commerce, which Congress may undertake to protect by removing the threat of such interruption at the outset. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41–43; *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453, 464–465; *Consolidated Edison Co.* v. *National Labor Relations Board*, 305 U. S. 197, 221–222; *National Labor Relations Board* v. *Fainblatt*, 306 U. S. 601, 604–605; *National Labor Relations Board* v. *Bradford*

Dyeing Ass'n, 310 U. S. 318, 326.[3] And since the volume of the Company's commerce is, as the court below conceded, "substantial," it is plainly "more than that to which courts would apply the maxim *de minimis.*" *Fainblatt* case, *supra,* p. 607.

Thus, this case reduces itself to a narrow compass. No question is here presented as to the scope of Congressional power under the commerce clause. The sole question is as to whether Congress has exercised that power so as to give the Board jurisdiction, i. e., whether, as a matter of statutory construction, Congress intended the National Labor Relations Act to apply in the situation here presented. The court below recognizes that (p. 2) "the letter of the National Labor Relations Act may cover such collections and deliveries in interstate commerce as are here involved," but nevertheless queries whether the Act should not be construed to exclude such interstate commerce. It refers to *United States* v. *Sorrells,* 287 U. S. 435, 446, which suggests the propriety of judicial relaxation of the literal application of a statute where such an application would plainly run counter to the legislative purpose. Cf. *Holy Trinity Church* v. *United States,* 143 U. S. 457; but cf. *Caminetti* v.

[3] See also, *National Labor Relations Board* v. *Hopwood Retinning Co., Inc.,* 98 F. (2d) 97 (C. C. A. 2d); *National Labor Relations Board* v. *National New York Packing & Shipping Co., Inc.,* 86 F. (2d) 98 (C. C. A. 2d).

United States, 242 U. S. 470. By describing the business here involved as "local," the court seems to indicate that there may be room for judicial construction, eliminating from the scope of the Act that which is literally covered thereby and which is plainly within the competence of Congress.

We respectfully submit that not only is there no occasion to go behind the plain language of the statute, as was done in such exceptional situations as the *Sorrells* case, but that even if such an examination be pressed, it will conclusively appear that the intention of Congress accords with the language employed.

The broad sweep of the provisions in Section 2 (6) and (7) of the Act (*infra*, p. 29), indicates a Congressional purpose to afford protection to all interstate commerce. There is no basis whatever for supposing that Congress meant to withhold such protection from interstate commerce of a substantial nature merely because it is conducted within a limited geographical area. Indeed, the commerce here under review, involving as it does continuous movement across the state line, is interstate commerce in its primary and most elementary sense, and it therefore seems impossible to believe that Congress intended to exclude such activities from the Act without making its purpose explicit. As this Court has held in the *Fainblatt* case (306 U. S. at 607), "the Act on its face * * * evidences the intention of

Congress to exercise whatever power is constitutionally given to it to regulate commerce * * *."

Even were the question of legislative intent still open, however, there is no color of authority or reason for an inference that Congress intended to exclude from protection against the injurious effects of industrial strife interstate commerce of a substantial nature merely because it is carried on within a restricted area, a factor which does not diminish the national interest in the unobstructed flow of such commerce. It is clear that Congress sought to relieve all interstate commerce of the burdens caused by labor disputes, not merely portions thereof selected without reference to any just conception of the national interest. Unless the limited geographic aspect of the business renders the Company's commerce unsubstantial or deprives it entirely of the nature of interstate commerce, which it plainly and concededly does not in this case, there can be no doubt of the legislative intent.

Further, it is apparent that an enterprise whose interstate operations are carried on within a relatively small area, may nevertheless be engaged in, or cause others to conduct, interstate commerce which far exceeds, by every standard, the materials and products crossing state lines to or from a manufacturing or processing plant of the type to which this Court has held the Act applicable. The interpretation which the Circuit Court of Ap-

peals suggests, therefore, necessitates an inference that Congress intended to protect commerce from the lesser burden but not from the greater, to grant this Company immunity from the Act while subjecting to it smaller businesses engaged to a lesser extent in interstate commerce.

Thus, it seems plain that the general congressional purpose is in accord with the broad language of the statute, and in view of the unambiguous declaration in the *Fainblatt* case as to the scope of the statute, it would seem that a more detailed inquiry into the legislative intent should be foreclosed. But even if the legislative history be explored, it will be found to confirm the result rather than to cast doubt upon it.

The reports of both the Senate and House committees which considered the bill that ultimately became the National Labor Relations Act, shed considerable light upon the intent of Congress. They disclose with unmistakable clarity that the Act was intended to afford protection to all commerce within the ambit of congressional power. The Senate committee unambiguously states (S. Rep. No. 573, 74th Cong., 1st Sess., p. 18):

> Cases under the antitrust laws, cited for the proposition that the Federal Government cannot deal with the employer-employee relationship, are not in point. They turned not on any question of constitutional limitations, but upon statutory construction of the extent of equity jurisdiction over

> labor activities under the antitrust laws. But the Federal Government has power to prevent burdens upon interstate commerce that reach beyond the intent of those laws in regard to labor disputes, and *it is intended in this bill to exercise the full constitutional power of Congress* to prevent the described unfair labor practices, which have no extenuating social values operating in their favor. [Italics supplied.]

Again, at p. 19 of the same report, the committee declares:

> While this bill of course does not intend to go beyond the constitutional power of Congress, as that power may be marked out by the courts, it seeks the full limit of that power in preventing these unfair labor practices. * * *

The House committee similarly made it clear that it understood the scope of the Act to be coextensive with the power of Congress under the Constitution (H. Rep. No. 1147, 74th Cong., 1st Sess., p. 7):

> These prohibitions, and the substantive rights, are made applicable, to the extent of Congress' power under the commerce clause, to employers and employees irrespective of whether the industry in question is subject to a code of fair competition.

In these circumstances, it would seem idle to contend that an exception should be grafted upon the plain language of the statute which is rich in

legislative history showing that such an exception was not intended. We therefore respectfully submit that the conclusion reached by this Court in the *Fainblatt* case as to scope of the Act calls for no limitation and should be followed here.

In the certificate the court states that the questions certified concern a "business of a local character, such as a laundry" and expresses the fear that an affirmative answer to the questions will result in application of the Act to "a great variety of businesses of purely local character * * *" (p. 2). This approach, we believe, reveals a fundamental misapprehension concerning the nature of the issue presented. The question should not be viewed as if it arose from or involved application of the Act to an entire industry or to all businesses of a particular type. In each case the Board applies the Act to a particular enterprise and the question before the court is whether the relation between that enterprise and interstate commerce is such as to support the Board's jurisdiction. The business of an employer who is directly and substantially engaged in interstate commerce may not be described as a "purely local" business, and there is no sound basis for an apprehension that sustaining the Board's jurisdiction over his enterprise will bring within the compass of the Act other employers who are engaged in the same industry or similar industries but whose busi-

nesses are in truth "purely local." The requisite "close and intimate" relation to commerce "is left by the statute to be determined as individual cases arise." *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 32. The process of decision "in maintaining the balance of the constitutional grants and limitations" is necessarily a "gradual process of inclusion and exclusion." *Santa Cruz Fruit Packing Co.* v. *National Labor Relations Board*, 303 U. S. 453, 467. "And what is reasonably clear in a particular application is not to be overborne by the simple and familiar dialectic of suggesting doubtful and extreme cases" (*ibid.*).

But even if the industry as a whole be examined, it will appear that it gives rise to a substantial amount of interstate commerce and that neither the industry as a whole nor the business of this Company can be characterized as "purely local," as was done by the court below. The familiar hand laundry of former years has been largely replaced by establishments of considerable magnitude engaged in power laundering and the cleaning and dyeing of garments.[4] While we have found no available statistics concerning the amount of commerce to which these large servicing units give rise, some indica-

[4] During the year 1929 about 6,800 "power" laundries furnished employment to more than 233,000 employees and received a gross income in excess of $541,000,000, while over 5,000 cleaning and dyeing establishments employed some 60,000 persons and had receipts totaling over $201,000,000. U. S. Dept. of Commerce, Bureau of the Census, *Biennial Census: 1935, Power Laundries* (1937), p. 4, and

tion is afforded by the fact that during 1935, some 1,267 power laundries doing a business in excess of $128,000,000 operated in 23 metropolitan areas in the United States which comprise territory in more than one state.[5] Presumably, the amount of in-

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Cleaning and Dyeing Establishments, Rug Cleaning Establishments (1937), p. 3. These figures concern only establishments doing a gross business in excess of $5,000 per year. They also exclude the considerable number of such establishments which failed to file reports with the Bureau of the Census. "According to the Department of Commerce, the laundry industry in 1935 ranked *sixth* in total number of workers and *thirty-first* in sales volume when compared with 300 other industries included in the census survey." *The Power Laundry is a Major Industry*, in *Laundry Age* (April 1938), p. 54.

The individual units of the industry are large, the average receipts per unit being almost $80,000 in 1929 and 1,485 establishments reporting receipts in excess of $100,000 during that year. U. S. Department of Commerce, Bureau of the Census, *Census of Manufactures: 1931, Power Laundries, Drycleaning and Redyeing Establishments* (1933), p. 9. During 1935, the receipts of 983 establishments totalled $203,000,000 and the 6,470 power laundries which reported did a gross business of $369,452,459 as compared with the $42,073,000 business done by 16,826 hand laundries. U. S. Department of Commerce, Bureau of the Census, *Biennial Census: 1935, Power Laundries* (1937), pp. 4, 12, and *Census of Business, 1935, Service Establishments* (1937), vol. II, p. 1. The increase in the amount of capital required for an efficient plant has led to consolidations and the establishment of large chains, increasing the size of the average unit. U. S. Department of Labor, Women's Bureau, "*A Survey of Laundries and Their Women Workers in 23 Cities*," Bulletin No. 78 (1930), pp. 3–4; *History of an Industry*, in *Laundry Age* (June 1939), pp. 6–7.

[5] U. S. Dept. of Commerce, Bureau of the Census, *Biennial Census: 1935, Power Laundries* (1937), pp. 7–9; see U. S. Dept. of Commerce, Bureau of the Census, *Fifteenth Census of the United States, Metropolitan Districts, Popu-*

terstate commerce so occasioned is great, and by reason of the nature of the business constitutes a regular and continuous flow of commerce among the states. A negative answer to the questions herein would remove from the scope of the Act this considerable amount of interstate commerce, with respect to which Congress undoubtedly had power to legislate.

Extensively organized on both the employers' and employees' side into nation-wide associations [6] and trade unions,[7] the laundry and dry cleaning industry has a long history of frequent and bit-

lation and Area, 1932, *passim*. These multi-state metropolitan areas constitute more than one-fourth of all the metropolitan areas in the United States as defined by the Bureau of Census (*ibid.*). In the New York area one of the largest laundry and dry-cleaning establishments serves customers in New York, Connecticut, and New Jersey within its 35-mile service area. *Annual Report to Securities and Exchange Commission of Consolidated Laundries Corporation*, April 27, 1940.

[6] 2,300 power laundries in the United States and Canada, handling 80 percent of the industry's entire volume, are members of The American Institute of Laundering (*Laundry Age*, October 1939, p. 3; *Laundry Age Yearbook*, 1938, p. 131). The Laundryowners' National Association represented the industry in developing the N. R. A. code and was said to embrace 82 percent of the power-laundry business in the country. United States Department of Labor, Women's Bureau, *Factors Affecting Wages in Power Laundries*, Bulletin No. 143, 1936, p. 10. United action in dealing with labor is common. *Laundry Age*, the leading national trade journal, has "repeatedly pled for a united front by laundry owners wherever they are threatened by unreasonable demands from the unions." *United Front Stops Strikes*, in *Laundry Age* (January 1938), pp. 96–97.

[7] The two national unions in the laundry industry—the Laundry Workers' International Union, affiliated with the

terly contested strikes, some interstate in scope.[8] There is no indication that Congress intended, for some reason that is not readily apparent, to permit a large and important portion of the nation's trade to remain subject to interruption by industrial strife arising from practices which the Act proscribes. Where Congress has intended an even less extensive exemption of this nature, it has plainly so stated. See *e. g.*, the Fair Labor

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American Federation of Labor, and the Laundry Workers Joint Board (Amalgamated Clothing Workers of America), affiliated with the Congress of Industrial Organizations—have a combined membership of about 70,000 workers, almost one-third of all laundry employees. See *Laundry Workers' International Union in Convention*, Denver, Colorado, May 15, 1939; *Report of the Executive Council of the American Federation of Labor to the Sixtieth Annual Convention*, November 18, 1940, and *Documentary History, Amalgamated Clothing Workers of America: 1936–1938*, p. 35; *id., 1938–1940*, pp. 89–91.

[8] To cite but a few instances, in the greater Cincinnati metropolitan area, which includes North Kentucky, 2,000 laundry and dry-cleaning employees in 19 plants and 6 branches, struck for 13 weeks beginning September 28, 1937. The dispute was settled by a contract signed by 35 companies, including 5 Kentucky firms. *Cincinnati Post*, Kentucky Edition, Sept. 28 and 29, 1937, and *Cincinnati Enquirer*, Sept. 30, 1937, December 27, 1937. Of 12 interstate strikes in progress in October 1937 this was the second largest. See U. S. Bureau of Labor Statistics, *Monthly Labor Review*, February 1938, p. 440. In the New York metropolitan area, a strike called in September 1937, originally directed against three large dry-cleaning chains comprising 95 stores in New York and affecting about 6,000 workers, spread to the New Jersey plants in which the actual servicing of the garments was done. This strike was the largest of 15 interstate strikes in progress at the time.. See U. S. Bureau of Labor Statistics, *Monthly Labor Review*, January

Standards Act of 1938, Sec. 13 (a) 2.[9] And statutes containing no such exemption but, on the contrary, purporting to exercise the federal power over commerce generally, have not been held to exclude certain portions of such commerce merely because those portions were carried on wholly within areas of relatively small size. *Kansas City Western Ry. Co.* v. *McAdow,* 240 U. S. 51 (Employers' Liability Act); *Spokane & Inland R. Co.* v. *United States,* 241 U. S. 344 (Safety Appliance Act); *Ellis* v. *Inman, Poulsen & Co.,* 131 Fed. 182 (C. C. A. 9th) (Sherman Anti-Trust Act); *Fehr Baking Co.* v. *Bakers Union,* 20 F. Supp. 691 (W. D. La.) (same).[10]

II

IF THE QUESTIONS CERTIFIED ARE NOT ANSWERED IN THE AFFIRMATIVE, THE CERTIFICATE SHOULD BE DISMISSED WITHOUT ANSWER TO THE QUESTIONS

In the event that the Court determines that the probable effect of industrial strife upon the interstate commerce in garments serviced by the

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1938, p. 176; *N. Y. World Telegram*, September 13 and 14, 1937, and *New York Times*, September 15, 1937. More recently (March 14, 1940), a strike stopped completely the operations of a laundry and dry-cleaning company having its plant in New Jersey and 103 stores in New York. See Paterson *Call* and Newark *Call* during this period.

[9] Act of June 25, 1938, 52 Stat. 1060, 29 U. S. C., Supp. V, Sec. 213 (a) (2). That section provides that the wage-and-hour provisions of the statute shall not apply to "any employee engaged in any * * * service establishment, the greater part of whose * * * servicing is in intrastate commerce * * *."

[10] See, also, the following decisions of the Interstate Commerce Commission involving the conduct of interstate trans-

Company does not alone warrant application of the Act, we submit that the questions certified should not be answered but that the certificate should be dismissed. The questions, as put, do not comprehend all of the relevant facts upon which the Board concluded that the Company's unfair labor practices tend to lead to labor disputes affecting substantial interstate commerce; the questions, therefore, "are not raised by the case made * * *." *Seim* v. *Hurd*, 232 U. S. 420, 427. *Cf. United States* v. *Worley*, 281 U. S. 339, 340; *Graver* v. *Faurot*, 162 U. S. 435, 437; *Jewell-LaSalle Realty Co.* v. *Buck*, 283 U. S. 202, 209; *Wilshire Oil Co., Inc.*, v. *United States*, 295 U. S. 100, 102–103; *Hertz* v. *Woodman*, 218 U. S. 205, 211; *Lowden* v. *N. W. National Bank*, 298 U. S. 160.

In determining the substantiality of the effect upon interstate commerce which would be produced by a stoppage of the Company's operations, the Board could plainly consider the aggregate effect upon *all* such commerce which would be directly obstructed. The Board found that this commerce was of two types: (a) commerce in purchasing materials and supplies; and (b) commerce involved in the Company's collection, servicing, and delivery of garments. The sum effect upon commerce of both kinds constituted the sin-

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portation within relatively small areas: *In the Matter of Steubenville, etc., Traction Co.*, 64 I. C. C. 517 (Motor Carrier Act of 1935); *In the Matter of City of Bristol* v. *Virginian Ry. Co.*, 15 I. C. C. 453 (Interstate Commerce Act).

gle basis of the Board's jurisdiction. Conceivably, the Board may have believed that the effect upon either type of commerce was not in itself substantial, but that the aggregate effect was such as to warrant or require a conclusion that the jurisdictional prerequisites were satisfied in this case.

The question before the Circuit Court of Appeals as to application of the Act, therefore, concerned a business whose stoppage would produce the total effect upon interstate commerce which the Board's findings reflect. But the court, while reciting in the certificate (p. 1) the facts concerning the Company's receipt of materials and supplies, has certified questions which confine consideration by this Court to the effect of an interruption of the Company's business upon the commerce involved only in its collection, servicing, and delivery of garments. The questions in terms relate to an enterprise whose only connection with interstate commerce purports to be that which is stated in the questions.[11]

The Circuit Courts of Appeals for the Sixth, Ninth and Tenth Circuits, as well as the court below, have held that the threat of obstruction to interstate commerce in materials and supplies arising from labor disputes in the state of destination

[11] Question 1 inquires whether the Act applies "merely because" of the location of the business and its servicing of articles collected in or delivered to points in other States. Question 2 is as to a business "not engaged in interstate commerce, except insofar as it may collect articles to be serviced and may make deliveries to customers living across the state line * * *" (Certificate, p. 3).

warrants application of the Act.[12] There are no contrary decisions. The "familiar principle" invoked by the Court in *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 31–32, that obstructions to interstate commerce are within the reach of the Congressional power, would seem to recognize no distinction between effects upon incoming or outgoing commerce, or effects upon both. The Circuit Court of Appeals in this case excluded the recognized effects of the Company's unfair labor practices upon its incoming commerce from consideration by this Court on the bare ground that "the volume of the interstate Commerce thus involved is not sufficient, in our opinion, to bring the business within the jurisdiction of the Board" (Certificate, p. 1).

We believe that the volume of commerce in supplies—$10,810 during 1938, or 28% of the Company's total purchases of supplies during that year (Certificate, p. 1)—comprises commerce of an

[12] *Newport News Shipbuilding & Dry Dock Co.* v. *National Labor Relations Board*, 101 F. (2d) 841, 843 (C. C. A. 4), modified and affirmed, 308 U. S. 241; *National Labor Relations Board* v. *A. S. Abell Co.*, 97 F. (2d) 951, 955 (C. C. A. 4); *National Labor Relations Board* v. *Norfolk Shipbuilding & Drydock Corp.*, 109 F. (2d) 128, 129 (C. C. A. 4); *Virginia Electric & Power Co.* v. *National Labor Relations Board*, 115 F. (2d) 414, 416 (C. C. A. 4); *Consumers Power Co.* v. *National Labor Relations Board*, 113 F. (2d) 38, 40–41 (C. C. A. 6); *National Labor Relations Board* v. *Sunshine Mining Co.*, 110 F. (2d) 780, 784 (C. C. A. 9), certiorari denied, No. 352, this Term, January 13, 1941; *Southern Colorado Power Co.* v. *National Labor Relations Board*, 111 F. (2d) 539, 543 (C. C. A. 10).

amount substantially "more than that to which courts would apply the maxim *de minimis.*" *Fainblatt* case, 306 U. S. at 607. The significant fact, however, is that there is no need for the effect upon incoming commerce to be substantial in itself in order for it to be relevant to a determination whether the Company is subject to the Act. The effect upon incoming commerce is one element making up an aggregate effect; the decisive question is whether the aggregate effect is substantial, not whether each of the component effects in itself satisfies that test. The Circuit Court of Appeals rejected the view that the Board might base its conclusion that the Act did or did not apply upon the total effect of a stoppage of operations upon interstate commerce; in its order denying the Board's motion to amend the certificate, the court stated that (Certificate, p. 6)—

> The case is not one of aggregating different elements upon which a finding of jurisdiction might be based; but of determining whether one of the elements tends to furnish any basis of jurisdiction.[13]

[13] In the motion to amend the certificate, the Solicitor General suggested that the following question was appropriate for certification: "Does the National Labor Relations Act apply to a laundry and cleaning and dyeing establishment which, during 1938, the year concerning which evidence was adduced, received $10,810.90 worth of materials and supplies in interstate commerce, out of total purchases of this kind amounting to $38,333.15, and, of its gross income of $128,752.96 during that year, derived $28,088.43 from the servicing of garments collected from and delivered to points in a State other than that in which the plant is located?"

It would have been quite possible for the Board to consider the case as involving two separate questions whether the Company is subject to the Act by reason (a) of its interstate purchases, and (b) of its servicing of garments collected and delivered in other States. We submit, however, that where the Board has viewed as a single issue whether the effects upon interstate commerce of a labor dispute in a particular business are such in the aggregate as to bring the business within the Act, and this view is proper under the Act, the Circuit Court of Appeals should not be permitted, upon a patently unsound ground, to require consideration of the issue by this Court upon a different basis from that upon which the Act was applied by the administrative agency.

It should be observed that it would be appropriate, procedurally, for the Court to answer the certified questions in the affirmative, for such answers would be dispositive of the controversy. On the other hand, if negative answers should be given, there would still be left open the question whether both types of activity in the aggregate furnish a basis for the Board's jurisdiction, notwithstanding that neither alone may be sufficient for that purpose. And since the Board rested its jurisdiction upon both grounds taken together, rather than alternatively, it would seem inappropriate for this Court to decide that one of those grounds, standing alone, is insufficient. Accord-

ingly, we respectfully submit that the questions certified can and should be answered in the affirmative, but that, because of the unusual posture of this case, if affirmative answers cannot be given, the certificate should be dismissed.

CONCLUSION

It is respectfully submitted that the questions certified by the Circuit Court of Appeals for the Fourth Circuit should be answered in the affirmative, but that, if such answers may not be returned, the certificate should be dismissed without answer to the questions.

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FEBRUARY 1941.

APPENDIX A

The Board's findings of facts and conclusions of law concerning the applicability of the Act to the Company's business are as follows (19 N. L. R. B., No. 112):

FINDINGS OF FACT

1. THE BUSINESS OF THE RESPONDENT [1]

White Swan Company is a West Virginia corporation having its office and plant at Wheeling, West Virginia. It operates a combined laundry and dry cleaning establishment. The essential supplies and equipment used by the respondent in its operations are soap, bluing, bleach, cleaning solvent, coal, water, salt, paper, tape, and padding. During 1938 the respondent purchased supplies and materials costing $38,333.15. Approximately 28.2 percent, or $10,810.90 by value, of its supplies and equipment were shipped to the respondent's plant from points outside the State of West Virginia. The respondent's gross income during the same period was $128,752.96. The respondent transports garments in its trucks from customers in Ohio to the respondent's plant in West Virginia to be serviced. After they are serviced, the respondent delivers the garments in its trucks to the customers in Ohio. Approximately 12.93 percent of the respondent's gross in-

[1] These findings are based in part on a stipulation of facts.

come for 1938 was derived from the servicing of garments which were collected from and delivered to customers in Ohio, in the manner described above. In addition thereto, approximately 5 percent of its gross income during 1938 was derived from the servicing of garments which persons not in the respondent's employ collected in Ohio, brought to the respondent's plant for servicing, and delivered to persons in Ohio after the garments were serviced. The total income from work involving interstate shipments during 1938 was $23,088.43.

* * * * *

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

* * * * *

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

APPENDIX B

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Supp. V, Sec. 151, *et seq.*) are as follows:

SEC. 2. When used in this Act—

* * * * *

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

* * * * * *

SEC. 10 (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

U. S. GOVERNMENT PRINTING OFFICE: 1941